

## DMLR PERMIT REGULATORY WORK GROUP

Oxbow Center, St. Paul, Virginia

April 16, 2008

11:30 a.m.

Butch Lambert	Ian Dye	Gerald Collins
Les Vincent	Otis D. Mullins	Jerry Wess
Jan Zentmeyer	Roger Jones	Mike Edwards
Gavin Bledsoe	Barry Spry	Brooks Smith
Greg Baker	Greg Clark	John Jones
Tom Mackey	Dave Gruber	Michael Smith
Todd Richardson	Tracy Goff	Leslie Bright
Daniel Kestner	Byrd Copley	Bob Blackstock
Gary Sloan	John Looney	Randy Stanley
Lesa Baker	Tad Nunley	Phil Mullins
Gary Egan	Brian Evans	Tom Baumgarth
Joey O'Quinn	Roberta Hylton	Buddy Hamilton
Lynn Haynes	Nathan Conn	James Mullins
John Molinary	Mary Cromer	Harve Mooney
Annette Poore	Mark Sproles	Keith Mohn
David Allen	Tim Browning	Lance DeBord
Brad Kreps	Marilyn Gates	

### **Regulatory Work Group – Gavin Bledsoe**

NPDES permit fees - § 45.1-254 of the **Code of Virginia** was amended by enactment of Senate Bill # 413 (Chapter 275 of the 2008 Acts of Virginia General Assembly) to provide for permit application and anniversary fees for discharge outfalls subject to the NPDES permits. The permit/renewal application and anniversary fees of \$300 per discharge outfall will be assessed by the DMLR effective July 1, 2008.

### **Proposed Regulatory Amendments:**

In January, the DMME received a 732 notice from OSM to amend the Va. regulations regarding valid existing rights. An amendment to 4VAC25-130-700.5 is being proposed to be consistent with applicable federal amendments regarding “**valid existing rights**” as published in the Dec. 17, 1999 Federal Register.

#### Background –

- Federal Regulations amendments regarding “valid existing rights” published in Federal Register (Vol. 64, No. 242, effective Dec. 17, 1999).
- Aug. 22, 2000, OSM letter to DMME requiring amendment to Virginia’s regulatory program under 30 CFR 732.17(c), to remain consistent with federal requirements.

- Oct. 23, 2000, DMME response letter to OSM's 732 letter of Aug. 22, 2000.
- Allen D. Klein, Regional Director of OSM granted permission for states to delay submitting program amendments on the "VER" rules until industry challenges to rule were adjudicated.
- Jan. 15, 2008, in the U. S. Court of Appeals for the District of Columbia, *Nat'l Mining Association vs. Dirk Kempthorne, Sec. of the Interior* (Case # 06-5199), affirmed the judgment rendered by the U.S. District Court for the District of Columbia (Case # 00cv00283). – "*The district court properly accorded Chevron deference to the Secretary's interpretive rule.*"
- January 31, 2008, 732 notification letter from Ian Dye, OSM Area Office Manager to Dir. B. Lambert to amend its program to address 12/17/99 changes to Fed. Regulations (30 CFR, Vol. 64, No. 242, pp70766-70838) regarding "valid existing rights".

**Regulation(s) - 4VAC25-130-700.5; 4VAC25-130-773.15; 4VAC25-130-773.20; 4VAC25-130-773.21; 4VAC25-130-774.12; 4VAC25-130-774.17; and 4VAC25-130-778.13**

Amendments to the Virginia regulations are being proposed & made pursuant to §45.1-230(A) of the **Code of Virginia**, as amended, to be consistent with applicable federal amendments regarding "ownership and control" standards published in the Dec. 3, 2007 Federal Register (Vol. 72, No. 231, pp 68000-68031). The federal amendments became effective as of January 2, 2008.

**Regulation(s) - 4VAC25-130-700.5; 4VAC25-130-773.13; 4VAC25-130-800.40; 4VAC25-130-801.12; 4VAC25-130-801.13; and, 4VAC25-130-840.14**

Amendments to the Virginia regulations are being proposed to –

- Replace the use of "cognovit note" with "indemnity agreement" for the self-bond instrument under §4VAC25-130-801.13 of the regulations and §45.1-270C of the **Code of Virginia**, as amended. (Regulations - 4VAC25-130-700.5; 4VAC25-130-801.12; and 4VAC25-130-801.13)
- Revise §4VAC25-130-773.13(b)(1) to provide public entities with the same amount of time to comment on an application as provided to the public.
- Revise §4VAC25-130-800.40(f) to provide delete the provision that the hearing may be held at the State capital.
- Amend §4VAC25-130-840.14(c)(2) to allow the agency to provide the information by electronic transmittal and the maintenance of the description of available information from the Division's offices and internet site.

Gavin discussed the state and federal processes for changes to the Virginia regulations.

The meeting was dismissed at 12:00 noon.